

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

HASAN M. HUSSAIN,

Respondent.

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DOCKET NO. 06-3353-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice dated April 18, 2006 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent HASAN M. HUSSAIN that HUD was proposing his debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a period of twelve months from the date of the final determination of this action. HUD advised defendant in the April 18, 2006, Notice that the proposed debarment action was in accordance with the procedures set forth in 24 CFR part 24. Further, the Notice informed Respondent that the proposed debarment was based upon his criminal conviction in the United States District Court for the District of Massachusetts.

Respondent's conviction followed his guilty plea to four counts of an Indictment that charged him with one count of conspiracy to commit mail fraud in violation of 18 USC 371, one count of mail fraud in violation of 18 USC 1341, and two counts of witness tampering in violation of 18 USC 1512(b)(3). In brief, the Indictment describes Respondent's participation in a "scheme to defraud the true owners and tenants of certain real property by obtaining ownership and control of the real property from them." The Indictment further describes how Respondent and others "made a host of misrepresentations, including the manufacture and recordation of fraudulent deeds, which purported to convey real property."

The court imposed a sentence of 37 months in prison on Respondent along with placing him on supervised release for a term of 3 years. Additionally, Hussain was ordered by the court to pay a fine of \$7,500.00 and make restitution in the amount of \$143,074.79.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on August 1, 2007¹, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was present at the hearing and was represented by his attorney, Robert H. Glotzer, Esq. Todd Maiberger, Esq. appeared on behalf of HUD.

SUMMARY

I have decided, pursuant to 24 CFR part 24, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a period of 12 months from the date of this Notice. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Notice of Proposed Debarment and Termination of Existing Suspension dated April 18, 2006.
- (2) Letter from Respondent dated July 17, 2006, to then-Debarring Official's Designee Mier Wolf.
- (3) The Indictment against Respondent returned May 28, 2003.
- (4) The Judgment in a Criminal Case filed March 13, 2006.
- (5) A letter dated November 1, 2005, from the U.S. Attorney for the District of Massachusetts setting forth the terms of the plea agreement with Respondent.
- (6) A letter from Respondent to the Debarment Docket Clerk dated April 27, 2006.
- (7) The Government's Brief in Support of Twelve Month Debarment filed June 28, 2006 (including all attachments and exhibits thereto).
- (8) A 10-page Fax from Respondent's attorney dated July 29, 2007, transmitting, among other things, complimentary letters from Respondent's clients and a reference list of principals in American Development Partners, LLC, showing Respondent as president and director and a consultant in real estate.
- (9) The tape recording of the August 1, 2007, hearing.

HUD's ARGUMENTS

HUD argues that Respondent was a licensed real estate agent who participated in at least one FHA transaction, thus he is a participant or principal because of his

¹ A hearing on this matter was first held on June 26, 2007. At that time, Respondent objected to holding the hearing, arguing that the hearing should be continued because his attorney was absent. The Debarring Official's Designee overruled Respondent's objection and the hearing was held. In part, the Debarring Official's Designee proceeded with the hearing over Respondent's objections because Respondent's attorney did not advise the hearing that he would be unable to appear, notwithstanding that he had received the Debarring Official's Order setting the hearing date and that the Debarring Official's Designee had issued a Show Cause Order and two other Scheduling Orders in an attempt to dispose of this matter that had been stayed and or continued at the instance of Respondent. The Debarring Official's Designee subsequently issued another Scheduling Order setting a new hearing for August 1, 2007, because of the malfunction of the recording equipment at the end of the June 26, 2006, hearing, and in the interest of giving Respondent one more opportunity to have his counsel present at the hearing.

involvement in lower-tier covered transactions with the Department. Alternatively, as a former real estate agent, Respondent may reasonably be expected to be involved in a covered transaction. Consequently, Respondent's criminal conviction is a basis for his debarment. HUD further argues that Respondent's conviction for his fraudulent and other criminal acts casts doubt on his business integrity and honesty and on his worthiness to do business with the federal government. HUD also contends that Respondent's disputing whether he was ever involved in an FHA transaction is "not mitigating on the issue of whether he is a participant or principal in HUD programs, and the proposed debarment should be granted."

RESPONDENT'S ARGUMENT'S

Respondent's attorney, though conceding that Hussain holds a real estate license, argued that HUD never provided any documentation that Hussain ever used his license. Counsel contended that under Massachusetts law, Respondent is required to work with a licensed real estate broker before he is eligible to practice on his own, and Hussain did not have that association. Respondent contended that the criminal indictment had nothing to do with HUD, that none of the charges preferred against him in the criminal proceeding involved HUD property or HUD funds. Respondent testified that he could establish his innocence of any wrongdoing if he were free to discuss his criminal case. However, according to Respondent and his attorney, Respondent is constrained by the plea agreement with the former U.S. attorney who prosecuted Respondent's criminal case from discussing the case.² Respondent conceded, however, in his April 27, 2006, letter that "[i]f the debarment is based strictly on the "conviction" obtained by the US Attorneys office as stated in the rules [24.850(b)]; than [sic] [he] can have no opposition."

FINDINGS OF FACT

1. Respondent was a participant in a covered transaction.
2. Respondent held a real estate salesperson license issued on June 11, 1989, by the State of Massachusetts that expired on October 1, 2001.
3. At the time of the commission of the crimes in 2003, as alleged in the Indictment which resulted in his conviction, Respondent held an expired real estate license.
4. Respondent pleaded guilty to the four counts in the Indictment, which charged him with witness tampering, mail fraud, and conspiracy to commit mail fraud.
5. Respondent was sentenced to a period of imprisonment of 37 months and ordered to pay restitution of \$143, 074.79, and placed on supervised probation for three years.

² The record was held open until August 30, 2007, to allow Respondent's attorney to try to contact the prosecutor in Respondent's criminal matter who had, Respondent's attorney told the hearing, since the criminal proceeding left the U.S. Attorney's office. The reason for attempting to contact the former prosecutor, as counsel represented it, was to get Respondent released from the prohibition imposed on him not to discuss the criminal matter. The Debarring Official's Designee has received no communication and has had no contact with either Respondent or Respondent's attorney since the August 1, 2007, hearing.

6. Respondent has not paid the full amount of the restitution.
7. Respondent concedes that his criminal conviction provides a basis for his debarment under 24 CFR 24. 800.
8. Respondent provided no independent evidence that he was legally barred from discussing his plea agreement, in support of his contention that the putative bar placed him at a disadvantage in challenging his debarment.
9. Respondent was given ample time and opportunity at the close of the hearing to submit any documentation for the record, but no submission was received by the Debarring Official's Designee.

CONCLUSIONS

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant in a covered transaction as defined in 24 CFR part 24.
2. Respondent, who held himself out to be a consultant and a real estate agent, was a principal as defined in 24 CFR 24.995.
3. Respondent participated in real estate transactions prior to his criminal conviction.
4. Respondent, in the future, may reasonably be expected to be a participant or principal in a covered transaction.
5. Respondent's fraudulent acts in his real estate activities resulted in his conviction, which serves as the basis for his debarment.
6. Pursuant to 24 CFR 800, a conviction for commission of fraud or making false statements, *inter alia*, is a cause for debarment.
7. Respondent cited no legal authority for his argument that his failure to hold a currently updated real estate license at the time of the commission of his crimes immunized him from the reach of the debarment regulations under 24 CFR part 24.
8. Respondent has not yet paid the full restitution ordered by the court.
9. Respondent's involvement in the scheme to defraud owners of their property and thereby obtain ownership and control of the property raises grave doubts with respect to his business integrity and personal honesty.
10. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
11. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs fail to act with honesty and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined to debar Respondent for a period of 12 months from the date of this Notice. In accordance with 24 CFR 24.870(b)(iv), Respondent's "debarment is effective for covered transactions and contracts that are subject to the

Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.”

Dated: 27 Sept. 2007

Henry S. Czauski

Henry S. Czauski
Debarring Official